TOPICAL INDEX TO PETITION FOR WRIT OF CERTIORARI.

TOPICAL INDEX OF BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Cases Cited.

In the Supreme Court of the United States

October Term, 1947.

A. PHILLIP RANDOLPH and MILTON P. WEBSTER, individually and as International President and First International Vice-President of the Brotherhood of Sleeping Car Porters, Train, Chair Car, Coach Porters and Attendants; WILLIAM P. ORR, O. S. SCARBOROUGH, SR., W. E. MCCANLESS, W. S. DAVIS, W. H. MERRILL, C. W. JONES and C. E. HARVEY, individually and as class plaintiffs of the class herein called Train Porters, and BROTHERHOOD OF SLEEPING CAR PORTERS, TRAIN, CHAIR CAR, COACH PORTERS AND ATTENDANTS, an unincorporated labor union, and LOCAL TRAIN PORTERS UNION NO. 3, a union of Train Porters employed by the two railroad companies herein made defendants, which is likewise an unincorporated local union, all as represented by the foregoing class plaintiffs, *Petitioners*,

VS.

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, a Missouri railroad corporation, and MISSOURI-KANSAS-TEXAS RAILROAD COMPANY of Texas, a Texas Corporation, and E. R. BRYAN, General Chairman Brotherhood of Railroad Trainmen, Missouri-Kansas-Texas Lines, R. D. Wood, Vice-General Chairman of the Brotherhood of Railroad Trainmen, Missouri-Kansas-Texas Lines, ROY ELLIOTT LANG, Local Chairman, First District, Brotherhood of Railroad Trainmen, Missouri-Kansas-Texas Lines, JOHN WILLIAM DEARING, President of the Local Lodge, Brotherhood of Railroad Trainmen, Missouri-Kansas-Texas Lines, HOLLIS ORVAL THOMPSON, Local Chairman 2nd District, Secretary-Treasurer of Local Lodge, Brotherhood of Railroad Trainmen, Missouri-Kansas-Texas Lines, individually and as class representatives of said Brotherhood of Railroad Trainmen on the railroad system of the two defendant railroad companies; and BROTHERHOOD OF RAILROAD TRAINMEN, an unincorporated labor union as represented by the foregoing named members of the class defendants, *Respondents*.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

To the Honorable Fred M. Vinson, Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

(Figures in parentheses are, unless otherwise indicated, pages of the printed record.)

Petitioners, A. Phillip Randolph, *et al.*, individually and and in their representative capacities, respectfully pray that a writ of certiorari be issued to review the judgment of the United States Circuit Court of Appeals for the Eighth Circuit entered November 5, 1947 (705), reversing the judgment of the District Court of the United States for the Western District of Missouri, which later judgment on January 20, 1947, granted to petitioners a temporary injunction (160).

Opinions Below.

The opinion of the Court of Appeals has not yet been published but it appears in the printed record at pages 695 and following. The opinion of the District Court (160) is reported, *Randolph* v. *Missouri-Kansas-Texas Railway Co.*, 68 Fed. Sup. 1007.

Jurisdiction.

The jurisdiction of this Court is invoked under Title 28, Section 344, Judicial Code as amended Section 237.

The petition for certiorari has been timely presented. Petitioners, in proper time, form and substance filed their petition for rehearing on November 19, 1947 (709), which said petition was by the court overruled December 17, 1947 (715). This petition, brief in support thereof and

printed record are being filed in the office of the Clerk of the Supreme Court of the United States and the case is being docketed within three months of said last named date.

Summary Statement of the Matter Involved.

For brevity we adopt the following nomenclature:

By *train porters* is meant train, chair car, coach porters and attendants employed by defendant carriers who are members of the Labor Union, Brotherhood of Sleeping Car Porters, Train, Chair Car, Coach Porters and Attendants.

By *trainmen* is meant Brotherhood of Railroad Trainmen and members thereof employed by defendant carriers.

By *defendant carriers* is meant Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas.

By *services in controversy* is meant the six classes of service here in dispute which are specified in the Court's finding of fact No. 1, page 108.

The Decisions of the District Court and of the United States Circuit Court of Appeals.

The District Court, at the suit of the Porters, restrained the trainmen from interfering with and inducing and coercing the Carriers to repudiate, abrogate and cancel a contract between the Carriers and the Porters, providing for certain work to be done by the Porters (160-634). This was upon the ground that the Trainmen were guilty of a common law tort, in that by illegal means they sought to coerce the Carriers to terminate the contract between the Porters and the Carriers, to which the Trainmen were not parties, and upon the ground that if such illegal action

was not restrained the Porters would suffer irreparable damage (646).

The Court of Appeals reversed the judgment of the District Court with instructions to that court to dissolve the injunction on the ground that the Porters had an adequate and sufficiency remedy by proceedings under the Railway Labor Act, particularly Section 3 First (i), exhaustion of which, by the Porters, was a prerequisite to resort to equity. The decision of the Court of Appeals was based upon its interpretation of the decision in *Order of Conductors* v. *Pitney*, 326 U. S. 561, dealing with said Section 3 First (i) of the Railway Labor Act (696).

STATEMENT OF ESSENTIAL FACTS.

The District Court made extended findings of facts and gave declarations of law (108-115-133). There was no conflict of evidence on any material issue covered by the findings.

For more than forty years, on the system of the Carriers, the Train Porters, pursuant to contract and custom, by the parties made part of the contract, between them and the Carriers, have consistently and without interruption performed the services in question (109).

Neither the Brotherhood of Railroad Trainmen nor the members thereof, have now, nor have they ever had, a contract, written or oral, with the defendant Carriers, giving the Trainmen the exclusive right to perform any of said services. Nor have the Trainmen, pursuant to any practice or custom, during said forty years, exclusively performed such service. The custom and practice, for at least forty years, has been directly to the contrary. There is no conflict of evidence upon these questions (109-10-115-133).

Prior to 1946, and for a period of forty years, the Trainmen, being fully cognizant, acquiesced in and did not protest against the performance by the Porters of the services in controversy (Finding IV, p. 110).

Early in 1946, the Trainmen, acting through an agent thereunto authorized by the Trainmen, demanded that the Carriers terminate said contract with the Porters and take from the Porters the performance of any of said services in controversy and the Trainmen threatened that unless within ten days thereafter the Carriers complied with said demands, then in each instance, where a Porter performed any act falling within the services in controversy, a Trainman would file a claim against the Carrier for a full day's

pay of a Trainman on the run in question, even though another Trainman had served upon and been paid for such run and even though the act performed by the Porter was a single act such as throwing a switch (111-208-9-10).

This threat was not of a single and comprehensive proceeding, under the Railway Labor Act, by the Trainmen, to have the status and rights of the various parties fixed, determined and enforced, but it was a threat of separate filing by an individual Trainman, in every instance in which a Porter performed any single act connected with the service in controversy claims by the thousand (208-9-10).

Over 600 of such claims were actually filed by individual Trainmen, prior to the issuance of the restraining order. The representative of the Trainmen, on the witness stand, stated that if not prevented by injunctive orders the Trainmen would file, continue to file and cause to be filed such claims in every instance where any Porter, on any passenger train, performed even a single act of the services in controversy, and that such filing would continue until the Carriers took all such work away from the Train Porters and gave it exclusively to the Trainmen. The evidence shows that up to the time of the trial, such claims, figured upon the basis stated, would amount to more than $150,000. The Trainmen, in connection with the demand, called attention of the Carriers to the fact that on the Southern Pacific system the Trainmen had taken a strike vote, because that road had refused to take similar work away from its Porters and give it to its Trainmen.

Throughout the years the services of the Porters had been entirely satisfactory to the Carriers and the Carriers had been entirely content with the contract and practice thereunder with the Porters. And the Carriers desired to continue such contract indefinitely and would do so if it

were not for the pressure being brought on the Carriers by the Trainmen. Mr. Campbell, for the Carriers, said to the Porters that the Brotherhood of Railroad Trainmen was a powerful economic factor and that the Carriers could not financially stand a controversy with them in the premises, particularly in respect to the vast number of claims filed and threatened to be filed by the Trainmen in enormous amount; that the situation was pathetic from the standpoint of the Porters, but that the Carriers were powerless to do otherwise than to accede to the demands of the Trainmen, to cancel the contract and take the work of the Porters from them and give the same, together with pay therefor, to the Trainmen (112-113).

The Carriers accordingly served notice upon the Porters of their intention to cancel the contract with the Porters, abolish the practice pursuant to the contract and to give such work to the Trainmen (242).

The effective date of such action by the Carriers was the 30th day of June, 1946. The restraining order was issued the 24th day of June, 1946.

The court found that the acts of the Trainmen were malicious in the sense of the doing of a wrongful act without lawful justification or excuse (114). The court, as a matter of law, declared:

> "The Court declares the law to be that such conduct (conduct of the Trainmen) is inequitable, oppressive and unlawful, and such conduct, irreparable injury being present and an adequate remedy at law being absent, should be enjoined." (Declaration of Law I, p. 114.)

The court further declared:

> "Plaintiff's petition states and the evidence establishes a cause of action at common law, which is not dependent on, nor is it limited by the provisions of the Railway Labor Act." (Declaration II, page 114.)

The court also declared:

> "The court declares the law to be that the acts and conduct of the defendants as recited in the findings of fact, constitute fraud and duress and are a common law tort on account of which plaintiffs are entitled to injunctive relief." (Declaration III, p. 114.)

The court also declared the law to be:

> "The jurisdiction of this court is based alone on diversity of citizenship. It is not invoked nor based upon any contention by plaintiffs, nor does plaintiff's petition disclose, that it is a suit arising under the laws and constitution of the United States." (Declaration VI, p. 114.)

The court further declared that:

> "In the construction of the written contract between the Porters and the Carriers and the contract between the Trainmen and the Carriers, it was the duty of the court to take into consideration and give due weight to the prior contractual relationship of the parties, and any uniform and uninterrupted practice and custom of the parties in relation to the subject matter, and to consider and give weight to the practical and day-to-day construction that the parties put upon the contract after the same was entered into." (Declaration IV, p. 114.)

The court also declared that considering the terms of the contract and giving proper weight to the principles and canons of construction, the court found that the services in controversy fell within the provisions of the written contract of December 1, 1928, and that said contract, as did previous contracts, embraced the services in controversy. (Declaration IV, p. 114.)

Membership of Divisions of the Adjustment Board.

The threats by the Trainmen were to file said claims before the First Division of the National Railroad Adjustment Board (Title 45, 153, First (h)). Said Board consists of ten members, five of whom are selected by the Carriers and five are selected and paid by seven labor unions, whose members are subject to the jurisdiction of said Division. Said First Division has jurisdiction of Trainmen and *the Brotherhood of Railroad Trainmen is one of the seven unions that selects the five labor members.* The Porters' union has no voice whatever in such election. Title 45, Sec. 151 and following.

The Porters are all Negroes. For many years Negroes have been consistently, uniformly and without exception excluded from membership in the unions which name the five labor representatives on the First Division (484, 582, 598).

Hence, in any proceeding before said Division the rights of the Porters as against the Trainmen and the Carriers would be considered and decided by a court of ten members, five of whom are named *and paid* by seven unions of which seven the Brotherhood of Railroad Trainmen is one, and before a board, five members are appointed by unions which are prejudiced against Negroes in railway service.

Questions Presented.

I.

Where there is a contract plain, clear and understandable between the Carrier and the Railroad Union; and where there is no dispute between the parties to the contract as to the existence, meaning, scope and effect of said contract; and where both parties are satisfied therewith

and desire the same to continue; and where the plaintiff makes out a case entitling him to an injunction under the general principle of equity jurisprudence, should the equity court withhold its injunctive process until the plaintiff exhausts a proceeding under Section 3, First (i) of the Railway Labor Act or other provisions thereof?

II.

Where, in a dispute between two unions as to which is entitled to given work under a contract, the factual question is not intricate or technical, and where there is involved no more than the construction of contracts and uniform custom made a part of the contract by the parties, "in terms of the ordinary meaning of words and their position" (*Order of Conductors* v. *Pitney*, 326 U. S., l. c. 567), is resort to Administrative remedy under the Act "prerequisite to equitable relief in the federal courts" (*Tunstall* v. *Brotherhood of Engineers*, 323 U. S. 1. c. 213) when failure of equity to act will work irreparable injury?

III.

Does Section 3, First (i) of the Railway Labor Act require a proceeding before the Adjustment Board to settle a dispute between the plaintiff employees and the carrier employer, growing out of the interpretation and application of a contract between the parties when there is no dispute between the parties as to the existence, meaning and effect of their existing contract, before equity will intervene?

IV.

Where one union must apply to Division I of the Railroad Adjustment Board to which another union cannot be

made a party and where the other union must apply to Division IV of the Board in a proceeding to which the first union cannot be made a party, is there an adequate administrative remedy available to either union concerning a dispute between the unions?

V.

When two parties such as the Porters' union and the Carriers have an existing contract, concerning the meaning, scope and effect of which there is no dispute and which contract the parties desire to continue in effect, then if a third person, not a party to the contract, seeks to interfere with and induce one party to breach the contract by threats, intimidation and oppressive action, may such a third person be enjoined from such activity where irreparable injury is involved?

VI.

Where plaintiff bases his cause of action on the common law and does not seek nor assert any right, title or interest arising under the Railway Labor Act and where the wrong alleged is a common law tort, is there any administrative remedy under the provisions of the Railway Labor Act which plaintiff must exhaust before resorting to equity?

VII.

On the question of adequacy of administrative remedy available to the Porters:

A. Can any trial or administrative procedure, which does not measure up to the fullest requirements of the constitutional right of fair trial, constitute such a remedy as will oust a court of equity from its authority to issue injunction or other equitable process in the premises?

B. Can a trial or proceeding before an Adjustment Board, five of whose members are appointed and paid by seven unions, where the rights and interests of one of said seven unions are involved as against the rights of others, be a fair and adequate remedy ousting equity of jurisdiction?

C. Can a court or a board afford fair trial to a Negro litigant where five members thereof are appointed and paid by labor organizations that will not admit Negroes to membership therein?

D. Can a court or board afford a fair trial to a Negro Porter where one-half of the members of said court or board are appointed and paid by unions who believe that Negroes should not perform any service in actual transportation and train movement?

Reasons Relied Upon for Allowance of the Writ.

I.

The rulings by the Circuit Court of Appeals and its reasons therefor are of importance that transcends the rights of the individual litigants. The Porters are a large class, active in operation of passenger trains upon the entire railroad system of the United States, their services affecting the traveling public. If the opinion of the Court of Appeals is to prevail the immediate result will be that many of the Porters will lose their jobs, those that remain will have their hours lengthened and wages decreased, their seniority will be affected and they will otherwise suffer irreparable injury. The Court of Appeals has decided that they, *and those in like plight,* have no remedy in equity, no matter how grievous their wrongs. Under what circumstances do the members of a railway union have an administrative remedy? If so, when is such rem-

edy adequate—when is the exhaustion of such remedy a prerequisite to proceeding in equity?

When a class, any class, of railway employees finds itself in the dire straits shown by the record in this case, justice requires that there be authoritative decision by the Supreme Court of the United States, marking the path to be traveled that the employees may attain justice and redress of wrongs. To settle judicial confusion upon these most important phases of this most important Act, we respectfully urge the issuance of the writ.

II.

The Court of Appeals has widely departed from the fundamental requirements of fair trial in that it has held that a proceeding before an Adjustment Board, five of whose members are appointed and paid by seven unions, where the rights and interests of one of said seven unions are involved as against the rights of others, constitutes a fair and adequate remedy ousting a court of equity jurisdiction.

III.

The Court of Appeals has held that a Negro litigant is afforded a fair trial by a proceeding before a Board, five of whose members are appointed and paid by labor organizations that will not admit Negroes to membership therein.

IV.

The Court of Appeals has held that a Negro Porter may have a fair and adequate trial before a Board, where one-half of the members of said Board are appointed and paid by unions who believe as union policy that Negroes should not perform any services in actual transportation and train movement.

In the foregoing reasons (2-4) there is presented a situation of the gravest import. Nothing transcends the importance of what constitutes a fair trial and whether, under given circumstances, it has been afforded. The cases of *Hill* v. *Texas,* 316 U. S. 400, 406, 62 S. Ct. 1159, 1162, and *Patton* v. *Mississippi,* 68 S. Ct. 184; *Steele* v. *Ry. Co.,* 323 U. S. 192, l. c. 206, are typical cases. We urge that the decision of the Court of Appeals in this respect be brought before the Supreme Court for review of the element of fair trial.

V.

The decision of the Court of Appeals is in conflict with decisions by the Supreme Court of the United States among which decisions are *Steele* v. *Louisville Ry. Co.,* 323 U. S. 185, 65 S. Ct. 226; *Tunstall* v. *Locomotive Firemen,* 323 U. S. 210, 65 S. Ct. 325; *Moore* v. *Illinois Central Railroad Co.,* 312 U. S. 360, 61 S. Ct. 754; *Order of Railway Conductors* v. *Pitney,* 326 U. S. 561, 66 S. Ct. 322.

VI.

The Circuit Court of Appeals has rendered a decision in conflict with the decisions of other Circuit Courts of Appeal on the same matter. Notably, *Gaskill* v. *Roth* (8 C. C. A.), 151 Fed. (2) 366; *Washington Terminal Company* v. *Boswell,* 124 Fed (2) 235 l. c. 249; *Southern Railway* v. *Order of Railway Conductors,* 63 Fed. Sup. 306.

VII.

The Court of Appeals decision is likewise in conflict with State decisions on the same subject, *Evans* v. *Louisville Ry. Co.* (Supreme Court of Georgia), 12 S. E. (2) 611; *Delaware Ry. Co.* v. *Slocum,* 50 N. Y. Sup. (2) 313.

VIII.

The Court of Appeals has decided a federal question in a way probably in conflict with applicable decisions of this Court in that the Court of Appeals has ruled in effect that a court of equity will not issue its process in reference to any subject matter covered by the Railway Labor Act until after exhaustion of procedure under said act regardless of the existence or adequacy of an asserted administrative procedure under the Act.

IX.

The Court of Appeals has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of the power of the Supreme Court of supervision in that the court has denied an injunction under admitted facts and circumstances entitling the parties to injunctions and other equitable processes under settled principles of equitable jurisprudence.

Conclusion.

Wherefore and by reason of all which Petitioners respectfully pray that this Court shall issue its writ of certiorari to the United States Court of Appeals for the Eighth Circuit.

CLIF LANGSDALE,
CLYDE TAYLOR,
Attorneys for Petitioners.

In the Supreme Court of the United States

October Term, 1947.

A. PHILLIP RANDOLPH, ET AL., in their individual representative capacities, *Petitioners,*

vs.

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY AND MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS AND E. R. BRYAN, ET AL., in their individual and representative capacities, *Respondents.*

BRIEF OF PETITIONERS IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI.

I.

The petition for the writ of certiorari contains, so that there is not here repeated, the following:

(a) Reference to the report of the decision below.

(b) Statement of the grounds on which the jurisdiction of this Court is invoked.

(c) A concise statement of the case containing all that is material to the consideration of the questions presented.

(d) Questions presented.

(e) Reasons relied upon for the issuance of the writ.

There is in this brief presented:

(a) Specification of the assigned errors.

(b) Further specifications of the grounds and reasons for the Court to exercise its discretion for the issuance of the writ.

(c) Citation analyses of decisions by the Supreme Court of the United States and by other Circuit Courts of Appeal and State Courts with which the decision below is in conflict.

(d) Argument.

II.

Specification of the Assigned Errors Intended to Be Urged.

1.

The Court of Appeals fundamentally erred in holding that the Porters had an adequate administrative remedy under the Railway Labor Act and for that reason equity should stay the issuance of process.

2.

Such holding was erroneous for the reason that the Porters have no administrative remedy under any of the provisions of said Railway Labor Act.

3.

The Court of Appeals erroneously held that this was a proceeding under the provisions of the Railway Labor Act in which the plaintiffs were asserting rights, titles and interests by reason of said Act, whereas the cause of action is a common law cause of action in nowise dependent upon or derived from the Railway Labor Act.

4.

The Court of Appeals erred in holding that the Porters could have a fair trial before the Railroad Adjustment Board whereas five of the ten members of said Board are named by seven Unions, one of which is the Trainmen. Moreover, five of the ten members of said Board are named and paid by Railway Unions who will not permit Negroes to become members thereof, and who believe as a Union principle that Negroes should not be permitted to perform Railroad work.

The general factual situation and historical background of the litigation, against which legal principles are to be applied, may, we think, be profitably reviewed in a statement prefatory to the brief and argument.

III.

Preface to Brief and Argument.

This is the story of an appeal to equity by the Porters, to protect their jobs, held under a contract with the Carriers and a uniform, continuing and consistent custom and practice made a part of the contract by the parties, which contract now exists and has existed for more than forty years (Finding XXIII, p. 109). The appeal to equity is for relief against a determined and malicious (the court found it to be malicious, Declaration 1, p. 114) assault by the Trainmen, who by threats, fraud and duress (Finding VI, p. 111) are inducing and coercing the Carriers, against the Carriers' will, to abrogate the Carriers' contract with the Porters and to take the Porters' jobs and pay therefor from them and give them exclusively to the Trainmen.

The Carriers have been and are satisfied with the services being rendered and which for forty years have

been rendered by the Porters under the contract. The Carriers desire to continue such contract, custom and practice with the Porters and would do so if it were not for the unlawful pressure upon the Carriers by the Trainmen (Finding VIII, p. 112).

There is *no evidence whatever* (Finding V, p. 110) that the Trainmen have or ever have had the exclusive right to the jobs in question, by contract, written or oral, or by custom or practice. The court's finding to that effect stands unchallenged by any evidence to the contrary.

The District Court restrained the Trainmen from interfering and inducing and coercing the Carriers to repudiate, abrogate, cancel or violate the Carrier's contract with the Porters (163).

The Court of Appeals reversed the judgment of the District Court with instructions to dissolve the injunction on the ground that the Porters had an adequate and sufficient remedy by proceedings under the Railway Labor Act, and that exhaustion by the Porters of such proceedings was a prerequisite to resort to equity The action of the Court of Appeals was based upon its construction of the decision in *Order of Conductors* v. *Pitney,* 326 U. S. 561, dealing with Sec. 3 First (i) of the Railway Labor Act.

The Porters cannot resort to the Adjustment Board under said Section, for the manifest reason that there is no dispute or controversy between them and their employer as to the interpretation or application of the agreement between them.

Even if the Porters could have applied to the Adjustment Board they could not have a fair trial before the Board, because five of the ten members of the said Board are named and paid by seven unions of which the Trainmen are one, and because said seven unions, so naming

said five members of the Board, are prejudiced against Negroes and will not admit them to their unions.

The factual question involved in this case is simple; in fact it may be properly said that there *is* no material, factual issue. This is not a case where "The factual question is intricate and technical." It is not a case where interpretation of contract involves more than the mere construction of written instruments in terms of ordinary meaning and the application of undisputed evidence as to uniform, undeviating and long-continued custom, which by the parties have been made a part of the contract. (*Pitney case,* 326 U. S. 561). A court of equity is as well adapted as any administrative board, in fact more so, to decide the very rights of the parties and to protect and enforce such rights by well-known and effective process not available to any administrative board.

The injury to the Porters, if denied equitable relief, is cruel and irreparable. The court found that if they were not afforded injunctive relief they would suffer immediate and irreparable damage without adequate remedy at law (Finding X, p. 113).

Many of the Porters, some of whom have served more than forty years, would lose their jobs; those remaining in the service would have their hours increased and rates of pay decreased; they would have their pension rights reduced; their seniority rights would be impaired; they would no longer be subject to the limitations of the 16-hour continuous service law (Title 45, U. S. C. A., Sec. 2) (113-478-9).

Most of the Porters are unskilled in any work except that being performed by them as Porters, including the services in question. The Porters are all Negroes and no Negro is eligible to membership in any Railroad Union except their own. They cannot transfer to other railroad jobs (598-484-582).

BRIEF.

The Court of Appeals has ruled that the Porters are not entitled to equity process because they have an adequate administrative remedy before the Adjustment Board. The Porters have no administrative remedy for the reason they cannot obtain a fair trial before such Board, because of the interest and racial prejudice of the members of said Board against the Porters and in favor of the Trainmen.

IV.

Aside from all other questions and regardless of every other consideration, the Porters cannot have a fair trial vouchsafed to them by the *constitution, because five of the ten* members of the Adjustment Board are appointed and paid by seven Railway Unions, one of which Unions is the Trainmen.

That is to say, that the real opponent of the Porters, to-wit, the Trainmen, acting jointly with six other unions, name five of the ten judges that are to pass on the Trainmen's case. Moreover, all the seven unions, who name and pay five of the judges, are prejudiced against Negroes and will not admit Negroes to membership in their unions (598-485-582). The Constitution of the Trainmen Union expressly bars Negroes (582). Moreover, of the seven unions that name the five judges, believe and proclaim that Negroes should not perform any service in actual transportation and train movement.

Manifestly, no trial or administrative procedure which does not measure up to the fullest requirements of the Constitutional right of fair trial, can afford such a remedy as will oust a court of equity from its authority to issue injunctive or other equitable process.

It is fundamental, it requires no argument, to demonstrate that the very essence of fair trial, described in varying terms such as law of the land, due process, fair trial, but always meaning essentially the same thing, from the time the Magna Charta through the English Bill of Rights and English Petition of Right and the Bill of Rights, amendatory to the Constitution of the United States, is a trial before an impartial and disinterested judge. A trial before a judge who has a personal interest in the outcome thereof is no fair trial.

Precisely the same things may be said with respect to a prejudiced judge, and of all prejudice racial prejudice is the climax. A trial of a Negro before a judge who has racial prejudice against him is no trial.

Long citation is unnecessary. The decisions by the Supreme Court in *Hill* v. *Texas*, 316 U. S. 400, 406, 62 S. Ct. 1159, 1162; *Patton* v. *Mississippi*, 68 S. Ct. 184; *Steele* v. *Ry. Co.*, 323 U. S. 182, l. c. 206, are typical cases.

V.

The Court of Equity Has Jurisdiction in this Case to Issue Injunction Notwithstanding Alleged Administrative Remedy Under the Railway Labor Act.

The Railway Labor Act does not expressly withdraw or restrict jurisdiction of a court of equity in any respect whatever. Unlike the Norris-LaGuardia Act, jurisdiction is not in terms denied to equity in any respect. Where equity has withheld its process on matters subject to the Act it has not been upon the ground that equity was without jurisdiction in the premises, but because in particular instances the plaintiff has had an adequate administrative remedy under the Act. Such withholding is nothing but an application of the ancient doctrine that

equity, though it have jurisdiction, will not afford its process where there is an adequate remedy at law. This is made exceedingly clear by the action of the Supreme Court in the *Pitney case* (326 U. S. 561). Had the court conceived that equity was without jurisdiction, the petition would have been dismissed, as ordered by the lower court. But the Court ordered the case retained in equity to give an opportunity for proceedings under the Railway Act.

> "The dismissal of the cause should therefore be stayed by the District Court so as to give an opportunity for application to the adjustment body for an interpretation of the agreements. Any rights clearly revealed by such an interpretation might then, if the situation warrants, be protected in this proceeding." (326 U. S., l. c. 325.)

Therefore, the question is not whether the plaintiff has a remedy under the Act, but whether such remedy is adequate under the particular circumstances of each given case. Since equity does have jurisdiction, it will withhold its process only where there is a plain and adequate administrative remedy under the Act. If that remedy be not adequate, process will issue. The Supreme Court, notably in the *Steele case,* 323 U. S. 192, and *Tunstall,* 323 U. S. 210, and other courts sitting in equity have issued equitable process, notably injunctions, where the party did have an administrative remedy under the Act but where the court held that such remedy was not adequate. Even in the *Pitney case,* where it was held that the administrative remedies were sufficient to meet the situation and therefore equitable process should be withheld, it was none the less recognized and declared that equity would intervene without prior proceedings under the Act where the necessity to protect the interest of individuals or the public was clearly shown.

> "Of course, where the statute is so obviously violated that 'a sacrifice or obliteration of a right which Congress * * * created' to protect the interest of individuals or the public is clearly shown a court of equity could in a proper case intervene." (326 U. S. 561, l. c. 466.)

There is no case holding that a court of equity may not under any circumstances intervene where there is a remedy under the Act.

It is our submission that in this case the Porters had no remedy at all or, at most, a totally inadequate remedy by any conceivable proceeding under the Railway Act and that, hence, equity not only has jurisdiction, but should issue its process.

VI

Cases With Which the Decision Below Is in Conflict.

In *Moore versus Illinois Central Railroad Company,* 312 U. S. 630, 61 S. Ct. 754, the plaintiff, a railroad employee, brought suit against the company based upon a collective bargaining agreement between the plaintiff's union and the railroad. There was dispute and controversy as to the meaning, scope and effect of such contract. The railroad contended that Moore's suit was prematurely brought because the plaintiff had not exhausted his administrative remedy granted him by the Railway Labor Act particularly under Sec. 3 First (i). The court said:

> "But respondent says there is another reason why the judgment in its favor should be sustained. This reason, according to the respondent, is that both the District Court and the Circuit Court of Appeals erred in failing to hold that Moore's suit

was prematurely brought because of his failure to exhaust the administrative remedies granted him by the Railway Labor Act, 44 Stat. 577, as amended, 48 Stat. 1185, 45 U. S. C. A. 151. But we find nothing in that Act which purports to take away from the courts the jurisdiction to determine a controversy over a wrongful discharge or to make an administrative finding a prerequisite to filing a suit in the court. In support of its contention the Railroad points especially to *Section 153 (i)* which, as amended in 1934, provides that disputes growing out of grievances or out of the interpretation or application of agreements 'shall be handled in the usual manner up to and including the Chief Operating Officer of the carrier designated to handle such disputes. Failing to reach an adjustment in this manner, the dispute may be referred by the petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the dispute.' " (312 U. S., l. c. 634.)

"For neither the original 1926 Act nor the Act as amended in 1934 indicates that the machinery provided for settling disputes was based on a philosophy of legal compulsion. * * * The District Court and the Circuit Court of Appeals properly decided that Petitioner was not required by the Railway Act to seek adjustment of his controversy with the Railroad as a prerequisite to suit for wrongful discharge." (312 U. S., l. c. 635.)

It is significant that the very section of the Act, Section 3 (Sec. 153 U. S. C. A.), First (i), which the Court of Appeals in this case has held precludes proceeding in equity on the ground that proceeding under such section is an adequate remedy, was expressly before the court in the Moore case and said section in that case was held not to modify the jurisdiction of the courts.

State courts have ruled accordingly. In *Delaware Railroad Company* v. *Slocum,* 50 N. Y. Sup. (2d) 313, the Railway brought a suit for a declaratory judgment as to the respective rights and obligations of the Order of Railroad Telegraphers and Brotherhood of Railway Clerks under their respective contracts with the Company. It was contended that the procedure under the Railway Labor Act was adequate and exclusive and that the court was without jurisdiction to decide the rights of the parties until after the remedies under the Act were exhausted. The court said:

> "The present action involves neither the validity, construction, enforcement, nor effect of the Railway Labor Act, nor any federal statute. On the contrary, it is brought solely to obtain a declaratory judgment determining the rights and obligations of the parties under written agreement. The Plaintiff is seeking no rights under the Railway Labor Act. It seeks relief only under the contracts. State courts have taken jurisdiction of controversy involving working agreements, not only before the adoption of the Railway Labor Act, but since. Among numerous such cases are *Florestone* v. *Northern Pacific Railroad,* 198 Minn. 203, 269 N. W. 407, and *Franklin* v. *Pennsylvania Lines,* 122 N. J. Equity 205, 193, Atlantic 7, 112. The procedure under the Railway Labor Act seems inadequate to bind the three parties to this action.
>
> "proceeding before the Adjustment Board or otherwise under the Railway Labor Act has been had. Such proceeding is not a prerequisite to action in court. (*Moore* v. *Illinois Central Railroad,* 312 U. S. 630, 635, 636, 61 S. Ct. 754)." *Delaware Ry. Co.* v. *Slocum,* 50 N. Y. Sup. (2d) l. c. 315-16.

In *Gaskill* v. *Roth,* 8 C. C. A., 151 Fed. (2d) 366, forty-one conductors brought a suit for a declaratory judgment

against the Railroad and against the Order of Railroad Conductors to determine the rights of the parties under their respective contracts with the railroads. The lower court decided the case against the plaintiffs on the merits and after full hearing, which judgment was affirmed by the Court of Appeals. No proceeding was had before any Railroad Board nor did the court hold or intimate that any such proceeding was essential before a court could decide the merits.

Washington Terminal Company v. *Boswell* (U. S. Ct. Apps. D. C.), 124 Fed. (2d) 235, l. c. 249, clearly and unmistakably holds that the jurisdiction of the court is not ousted or truncated by the Railway Labor Act. That case was a suit for a declaratory judgment fixing the rights of employees of railroad companies under collective bargaining agreements. Then Judge Rutledge, in reviewing Moore against Central Railroad, stated as follows:

> "The decision in *Moore* v. *Illinois Central Railroad Company,* 312 U. S. 630, 61 S. Ct. 754, rendered since this case was argued, has put beside the point much of the argument here. The case held that the Railway Labor Act does not preclude an employee from bringing a suit for damages for alleged wrongful discharge contrary to a collective agreement. The plaintiff employee, however, had begun his suit before the administrative machinery had been in motion. The decision establishes that in such circumstances the Act has neither excluded the general jurisdiction of the courts nor made exhaustion of the administrative remedy prerequisite to its exercise for a decision of controversy which might be determined by the statutory method. At the threshold of controversy accordingly, the disputants have alternative routes which they may follow. One is entirely judicial without regard to the Railway Labor Act. The other is administrative and judicial according to its terms." (l. c. 238.)

Judge Rutledge further declared:

> "The foregoing considerations are reinforced by the fact that the carrier, under the decision in *Moore* v. *Illinois Central Railroad, Supra,* can bring its suit on the contract independently of the statute prior to the time when the dispute is submitted to the Board. Until then, at least, it has its election to pursue the exclusively judicial remedy or to follow the administrative and judicial one provided by the Railway Labor Act." (l. c. 249.)

See also *Nord* v. *Griffin,* 86 F. (2d) 481 (7 C.C.A.).

Southern Railway Co. v. *Order of Railway Conductors* (Dist. Ct. So. Carolina), 63 Fed Sup. 306, was an action for declaratory judgment construing a contract between the railway company and the union of railway conductors. It was not contended that the court was without jurisdiction because of the administrative remedy afforded by Section 3, First (i). The court held that the employment contract could be construed and adjusted either under authority of the Railway Labor Act or by carrying it to the Adjustment Board or by exercising common law rights to bring an action to construe contracts and protect rights.

> "From the foregoing language it appears that Congress intended that disputes of the character covered by the pending cause may be adjusted in either of two cases: First, under the authority of the Act by carrying it before the Adjustment Board or Second, by exercising the common law rights of any parties to bring an action to construe a contract to protect his rights. And so it is quite clear that there is concurrent jurisdiction of the subject made of this suit either by the Adjustment Board or a court of competent jurisdiction. The parties by agreement may use either method or adjudication, or

> either party may institute an action in a court or before the Board. I am of the opinion that if the matter is taken first before a court it will retain jurisdiction and carry the case through to an adjudication. If, however, the Board has taken jurisdiction the court will not intervene. These views seem amply sustained by numerous decisions of our courts." l. c. 308.

The court cites and quotes from *Moore* v. *Illinois Central Railroad,* 312 U. S. 630, 61 S. Ct. 754; *Washington Terminal Company* v. *Boswell,* 124 Fed. (2d) 235; *Delaware Corporation* v. *Williams,* 7 C. C. A., 129 Fed. (2d) 11. The court then continues:

> "There are numerous other cases, including cases in the State Courts sustaining these views, but I think that the foregoing are sufficient to amply sustain the views announced as to the construction of the Act in question."

Evans v. *Louisville Railway Co.* (Supreme Court of Georgia), 12 S. E. (2d) 611, was a suit by a group of employees for an injunction against violation by the company of a contract between the railway and the employees. It was contended that the court was without jurisdiction because the Railway Labor Act had afforded an adequate remedy and particularly under Section 3 First (i). The court ruled:

> "Rights of seniority, given under collective bargaining are such property rights as are not proper case but protected by injunction relief in a court of equity." 12 S. E. (2d), l. c. 615, citing cases.

The court further said:

> "It is contended under this provision (Sec. 3, First (i)) that the National Railroad Adjustment

Board is vested with exclusive jurisdiction over disputes between employees and the Carriers as to seniority rights or at least that the complaining employee or employees must, before resorting to the courts, first exhaust the remedy afforded by this provision. This contention is untenable. The present action is one to enforce certain alleged rights under a contract and does not involve or arise out of any order of the National Railroad Adjustment Board and the above provision does not purport in such case to prevent recourse to the courts in the first instance." 1. c. 614, citing the Moore case and others.

Appendices A and B.

There are printed as appendix two opinions by a three-judge court (District Court, Northern District Court). These opinions are illuminating and stress the necessity that this Court clear confusion upon this most important Act.

VII.

The Case of *Order of Railway Conducters of America* v. *Pitney*, 326 U. S. 561, 66 S. Ct. 322, is not in conflict but is in support of the judgment of the District Court.

The opinion of the Court of Appeals is based upon its construction of the Pitney case. That case is clearly distinguishable from the case at bar. There were vital facts and circumstances in the Pitney case, entirely absent in this case, which were controlling. There were three parties, Order of Railway Conductors, Brotherhood of Railroad Trainmen and the Railway. Each union had a contract with the railroad, under which each claimed the right to perform given service. *There was dispute and controversy based on conflicting evidence between the railroad and*

each union. The dispute was not confined to one between unions. The dispute upon conflicting evidence was between each union and the railroad. The plaintiff, being the conductors, had the right to go against the Carrier before the Railroad Adjustment Board under Section 3, First (i) of the Act, presenting a dispute *between themselves as employees, and the carrier as employer,* growing out of the interpretation or application of the agreement between the parties. The trainmen, being employees, had the right to go before the Adjustment Board against the carrier, being their employer, presenting a dispute as to the interpretation or application of the Trainmen's contract with the Carrier. Moreover, both the Conductors and the Trainmen would go before the same Division of the Board, being Division 1 (Section 3, First (h)).

Such issues were intricate and technical.

> "The factual question is intricate and technical." l. c. 567.

> "The record shows, however, that interpretation of these contracts involves more than the mere construction of a 'document' in terms of the ordinary meaning of words and their position." l. c. 566.

The court held that the Adjustment Board was an agency peculiarly competent and specifically designated to deal with such intricate and technical factual questions. Also the Court of Equity was not so constituted as to deal with such intricate and technical questions pertaining to the operations of railroads.

> "Only after the Adjustment Board acts, but not until then, can it plainly appear that such relief is necessary to insure compliance with the statute." l. c. 567.

Both because the Court of Equity was not so constituted as to pass upon the intricate and technical questions involved in that case; and also because the Railroad Adjustment Board was constituted and was experienced as to be better able to pass thereon; and because Division 1 of the Adjustment Board had jurisdiction to pass upon the questions presented in each case; because in the case of each union there was a dispute and controversy between it and the Carrier—the court withheld its equitable process until such proceedings were had.

The Pitney case and this case are in striking contrast. In this case there is no dispute or controversy between the Carriers and the Porters, calling for the construction and application of the contract between them. There is no dispute between the Carriers and the Porters as to the existence, meaning, effect and application of the contract between them. Both parties agree that for more than forty years, under contract, and custom and practice, made a part of the contract, the Porters have performed the duties in question. Both the Carriers and the Porters are satisfied with the contract and custom, and desire it to continue indefinitely in the future as it has undoubtedly endured through the years. The Adjustment Board has no authority to change lawful contracts between employer and employees with which the parties are satisfied.

Moreover, if the Porters had such remedy, they would have to go before Division 4 of the Adjustment Board, while the Trainmen would have to go before Division 1 and could not go before Division 4. (Section 3, First (h)). There is no way by which the Trainmen and the Porters could go, even separately, before the same Division. The confusion and uncertainity and even absurdity of two proceedings before different divisions of the Board, neither one having any authority to make a decision binding in or

otherwise affecting the other proceeding, would alone and without more, make the administrative remedy wholly inadequate.

The reason for the court's decision in the Pitney case, requiring the Court of Equity to stay its hand until proceedings were had under the Act, was that the Court of Equity was not so constituted or experienced as to enable it to deal with questions intricate and technical and requiring expert knowledge and experience, whereas the Board was so constituted. The opinion emphasizes that the decision in that case involved more than the mere interpretation of contracts or the construction to be placed thereon (l. c. 567). That reason is entirely absent in this case. There is no intricate, difficult or technical question involved in this case. The proof is clear, unmistakable and without conflict as to the existence and meaning of the Porter's contract, which has existed in its present form for forty years. There is no evidence whatever that by contract, oral or written, or by custom or practice, the Trainmen have had the exclusive right to such services at any time. The findings of fact, being supported by all the evidence, are conclusive on that question. The Court of Equity is not only qualified and constituted to enable it to pass upon such simple issue of fact, but is better qualified as a court than is the Adjustment Board as to all questions of law.

In this case, what are the questions of fact? *First*, was there a contract between the Porters and the Carriers permitting performance of the work in question by the Porters? *Second*, was there any dispute between the Carriers and the Porters as to the meaning, scope and effect of that contract? *Third*, were the parties content with the contract and desirous of its continuation unmodified? *Fourth*, did the Trainmen have an overlapping

contract which entitled them exclusively to the work in question? *Fifth*, was it, or had it been, the practice on the system for the Trainmen exclusively to perform such services?

Manifestly, it cannot be said with any color of reasoning that these issues of fact were intricate and technical, and that a Court of Equity was not so constituted as to enable it fairly to pass on such issues. Nor can it be said that the Adjustment Board, by reason of the intricate and technical questions of fact, was by constitution and experience better able to pass on such issues.

VIII.

The Porters have no adequate remedy before the mediation board (Title 45, Section 154, U. S. C. A.).

As heretofore submitted, the Porters may not go before the Adjustment Board against the Carriers to settle a dispute between them growing out of the interpretation or application of the contract between the Porters and the Carriers. Nor may the Porters go against the Trainmen before the Board for the manifest reason that the Board has jurisdiction *only* in disputes between employees and employers—it has *no* jurisdiction in disputes between one group of employees and another group of employees. (*Estes* v. *Union Terminal Co.*, 89 Fed. (2d) 768, 5 C.C.A., l. c. 770, 773; *Steele* v. *Louisville Co.*, 323, U. S. 192, 65 Sup. Ct. 226, l. c. 233; *Tonstall* v. *Brotherhood of Locomotive Firemen*, 223 U. S. 214, 65 Sup. Ct. 235, l. c. 237.) In the only dispute of which either Board has jurisdiction, i. e., a dispute between employer and employee, no other group of employees may be made parties, nor can such group intervene or otherwise be heard. (Same cases as last above cited.)

Likewise and for the same reasons, the Porters can have no proceeding before the Mediation Board for relief of the wrongs being committed against them by the Trainmen.

There is no question whatsoever here as to certification of accredited representatives nor any question of classification of employees for the purpose of collective bargaining under the provisions of Section 4 of the Act. There is no dispute between the Porters and the Carriers as to the interpretation or application of the contract between them. The Mediation Board is powerless, at least against the objection of the Trainmen, to issue any process or make any orders or adjudication to prevent the wrong being committed against the Porters by the Trainmen, i. e., coercion of the Carriers by unlawful means into cancelling the Porters' contract and taking the jobs from the Porters and giving them to the Trainmen.

Nor have the Porters any remedy whatsoever before the Mediation Board in resistance to the notice by the Carriers to the Porters that the contract would be terminated because of the pressure on the Carriers by the Trainmen. *It must be borne in mind* that the wrong here being committed is by the Trainmen against the Porters. *The contract is at will.* The Mediation Board cannot make contracts for the parties nor modify the terms thereof. It cannot order a contract terminable at will to be one of fixed duration. *The right* of the Porters against the Carriers is that the Carriers shall be free to exercise the judgment of the Carriers as to termination of the contract without legal interference or compulsion by the Trainmen.

> "*Contracts Terminable at Will.* The fact that the contract is 'at will' and terminable by either party at any time is of no consequence, where neither party has attempted to revoke the contract and was not

obliged to do so, since each party to the contract has a manifest interest in the freedom of the other to exercise his judgment without illegal interference or compulsion." 32 C. J. 228.

The right of the Porters against the Trainmen is to have the Trainmen restrained from coercion of the Carriers into abrogation of the contract and the taking of the Porters' jobs for the Trainmen.

No tribunal except a court of equity can meet that situation. Not only is the Mediation Board without any jurisdiction in the premises, but it has no process by which it could enforce its order. It cannot enjoin, as the equity court can, the unlawful and harmful coercion of the Carriers and prevent continuation of the very heart of the wrong that is here being perpetrated. If the Trainmen are stopped in their unlawful course, the Carriers (as shown not only by evidence but by their answer) will no longer seek to abrogate the contract nor take the jobs from the Porters and give them to the Trainmen, but will continue the existing status. Nothing short of that can do justice.

VIII.

Plaintiffs' petition states, and the proof shows, a cause of action at common law that is not dependent upon nor limited by The Railway Labor Act.

One who wrongfully causes a person to breach his contract with another is liable to the latter for damages resulting from such breach, and where irreparable injury occurs may be enjoined from such conduct.

IX.

Inducing Breach of Contract.

"One who maliciously or without justifiable cause induces a person to break his contract with another will be liable to the latter for damages resulting from such breach; and it is no defense that the contract is unenforceable because within the statute of frauds; nor that defendant misinterpreted the meaning of the contract, but where a partnership agreement was for no definite term, a third person was held not liable to one partner for inducing the other partner to terminate the partnership. Malice is proved if it appears that the defendant with knowledge of the contract, intentionally and without justification induced one of the contracting parties to break it." 2 Cooley on Torts, Sec. 227, 4th Ed.

In support of such text Judge Cooley cites the following cases:

"*United Mine Workers of America Dist. No. 17* v. *Chafin,* 286 Fed. 959; *Canellos* v. *Zotalis,* 145 Minn. 292, 177 N. W. 133; *Bacon* v. *St. Paul U. Stockyards Co.,* 161 Minn. 522, 201 N. W. 326; *Wheeler-Stenzel Co.* v. *American Window Glass Co.,* 202 Mass. 471, 89 N. E. 28, L. R. A. 1915F 1076; *Twitchell* v. *Nelson,* 126 Minn. 423, 148 N. W. 451, 601; *Schonwald* v. *Ragains,* 32 Okla. 22, 122 Pac. 203, 39 L. R. A. (N. S.) 854; *Tubular Rivet & Stud Co.* v. *Exeter Boot and Shoe Co.,* 159 Fed. 824; *Dale* v. *Hall,* 64 Ark. 221, 41 S. W. 761; *Employing Printers' Club* v. *Doctor Blosser Co.,* 122 Ga. 509, 50 S. E. 353, 69 L. R. A. 90, 106 Am. St. Rep. 137, 2 Ann. Cas. 694; *Morehouse* v. *Terrill,* 111 Ill. App. 460; *Gore* v. *Condon,* 87 Md. 368, 39 Atl. 1042, 40 L. R. A. 382, 67 A. St. Rep. 352; *Morgan* v. *Andrews,* 107 Mich. 33, 64 N. W. 669; *Van Horn* v. *Van Horn,* 56 N. J. L. 318, 28 Atl. 669; *Raymond* v. *Yarrington,* 96 Tex. 443, 72 S. W. 580, 62 L. R. A. 962, 97 A. M. St. Rep. 914; *Brown Hardware Co.* v. *Indi-*

ana Stove Works, 96 Tex. 453, 73 S. W. 800, 62 L. R. A. 962; *West Virginia Transp. Co.* v. *Standard Oil Co.,* 50 W. Va. 611, 40 S. E. 591, 56 L. R. A. 804, 88 Am. St. Rep. 895; *Martens* v. *Reilly,* 109 Wis. 464, 84 N. W. 840; *Angle* v. *Chicago, St. P., M. & O. Ry. Co.,* 151 U. S. 1, 38 L. Ed. 55, 14 Sup. Ct. 240, rev'g 39 Fed. 912; *Glamorgan Coal Co.* v. *South Wales Miners' Federation* (1903), 2 K. B. 454; *Giblan* v. *National Amalgamated Laborers' Union* (1903), 2 K. B. 600; *Quinn* v. *Leathem* (1901), A. C. 495." 2 Cooley on Torts, Sec. 227, 4th Ed.

Injunction will lie in such case.

"*Inducing Breach of Contract*—a. Unlawfulness of Act. A contract right, it has been said, is property which is to be protected against undue influence by persons not parties thereto, since such action on their part is a direct invasion of that right. A person or combination of persons who maliciously, without just cause or excuse, persuades a party to a contract of any character to break it, to the injury of the other party, is guilty of an actionable tort.

Relief by Injunction—(1) General Principles. While the mere interference with a lawful contract by a stranger thereto does not of itself give the injured person a remedy by injunction, which will be denied when full indemnity may be had at law, it is very generally held that an injunction will lie to restrain third persons singly or in combination from inducing the breach of a lawful contract by one of the parties thereto when it will result in irreparable injury to the other, irrespective of the fact that defendant is solvent. Nor is it essential that the contract should be of such a nature that specific performance could be decreed.

Contract terminable at will. The fact that the contract is 'at will' and terminable by either party at any time is of no consequence, where neither party

had attempted to revoke the contract and was not obliged to do so, since each party to the contract has a manifest interest in the freedom of the other to exercise his judgment without illegal interference or compulsion." 32 C. J. 228.

"From early time the common law recognized a right of action in the master for loss of services occasioned by injury to his servant, and in 1349, after the great plague had caused a scarcity of laborers, the Ordinance of Labourers gave an action for enticing away one who by the statute was required to work for another. Thus the law stood until the middle of the nineteenth century. Then it was declared in *Lumley* v. *Gye* that it was actionable to maliciously procure one to break a contract for personal services, though the one who broke the contract was not a servant. There was doubt for some time as to whether this doctrine applied to other than service contracts, but it is now clear that it applies also to commercial contracts generally, though not to contracts to marry.

In *Lumley* v. *Gye,* 2 El. and Bl 216, the right of action was said to exist against one who 'maliciously procures' the breach of contract, and the terms seemed to be used to describe a vindictive spirit. However, the House of Lords has said that 'it is settled now that malice in the sense of spite or ill will is not the gist of such an action as that which the plaintiffs have instituted,' but 'that the violation of a legal right committed knowingly is a cause of action, and that it is a violation of a legal right to interfere with contractual relations recognized by law if there be no sufficient justification for the interference." Burdick's Law of Torts (Fourth Edition), p. 472-3.

"19 General Rule in United States.—The weight of authority supports the rule that an action will lie against a person who, otherwise than in the legitimate exercise of his own rights, procures a breach of any

contract, even though it is not a contract of employment. The theory of this doctrine is that the right to perform a contract and to reap the profits resulting from such performance, and also the right to performance by the other party, are property rights which entitle each party to protection, and to seek compensation by action in tort for any injuries to such contract." 30 Am. Jur. p. 71-72.

Williams v *Sinclair Co.*, 74 Fed. Sup. 139, contains a summary of leading cases.

We know of no authority to the contrary.

X.

The demands, threats and conduct of and by the Trainmen constitute unlawful duress and oppression, particularly that kind of duress called business compulsion. Such conduct is a common law tort.

The modern doctrine of duress because of business compulsion has been exhaustively briefed and discussed in a notation in 79 A. L. R., page 655. A paragraph appears at page 657, as follows:

> "III. Modern doctrine of business compulsion. It seems to be established as a general rule, at least in this country, that the payment of money or the making of a contract may be under such circumstances of business necessity or compulsion as will render the same involuntary and entitle the party so coerced to recover the money paid, or excuse him from performing the contract. This doctrine is supported by many decisions, particularly the more recent ones, among which may be cited the following: * * *."

Following this quotation, the author has listed more than fifty cases from twenty-four different states, the United States and England.

The foregoing doctrine finds full support in the following cases:

Lonergan v. *Buford,* 146 U. S. 581, 13 Sup. Ct. 684; *Snyder* v. *Rosenbaum,* 215 U. S. 261, 30 Sup. Ct. 73; *Union Pacific Railroad Company* v. *Public Service Commission,* 248 U. S. 67, 58 S. Ct. 24; *Furman* v. *Gulf Insurance Company,* 152 Fed. (2d) 891, 8 C. C. A.; *Radeck* v. *Hutchins,* 95 U. S. 210, 213; *Ingram* v. *Lewis,* 37 Fed. (2d) 259, l. c. 264. We quote from the Furman case, 152 Fed. (2d) 891:

> "In general terms, duress is the domination of another's will to his detriment by means or under circumstances that make the particular transaction wrongful against him. *Cf. Wood* v. *Kansas City Home Telephone Co.,* 223 Mo. 537, 558, 559, 123 S. W. 6, 12; *Winget* v. *Rockwood,* 8 Circ., 69 F. (2d) 326, 329, 330; Restatement, Torts, Sec. 871, Comment f. Some states, including Missouri, have recognized the broad doctrine of 'business compulsion' in the field of duress. See 17 Am. Jur., Duress and Undue Influence, Sec. 7; Annotation, 79 A. L. R. 655; *White* v. *McCoy Land Co.,* 229 Mo. App. 1019, 1040, 87 S. W. (2d) 672, 685, affirmed sub. nom. *White* v. *Scarritt,* 341 Mo. 1004, 111 S. W. (2d), 18. In the still fluid state of that doctrine, we shall not attempt any crystallizing formulation of it here, since it is not necessary to do so for present purposes.
>
> Whether the free will of a party has been so dominated in a particular transaction as to have controlled his action is ordinarily a question of fact, where it is possible under the evidence for there to have been a wrongful use of coercive means or circumstances. *Cf.. White* v. *McCoy Land Co.,* 229 Mo. App. 1019, 1039, 1040, 87 S. W. (2d) 672, 684; *Winget* v. *Rockwood,* 8 Cir., 69 F. (2d) 326, 330." *Furman* v. *Gulf Insurance Company,* 152 Fed. (2d) 891, 8 C. C. A.

See also 17 Amer. Jur., p. 879.

It is true that mere threat to resort to civil process is not duress. But a threat to resort to oppressive process, proceedings unlimited in number, and for huge amounts where the intention is not to enforce an honest right but maliciously to overcome the will of the person threatened so that he will pay or render in total disregard of any merit in the claims, may be duress and is undoubtedly business compulsion.

The threat here was not litigation to settle rights but it was a threat to file thousands of cases, endless litigation. It was not a threat for some over-all litigation that would settle the issues but a separate claim for a full day's pay for a Trainman every time a Porter threw a switch. These threats coupled with a ten day ultimatum were made by a powerful economic organization with a hint of a strike hanging in the air.

The record presents a perfect case of business compulsion amounting to duress. When such duress and business compulsion was perpetrated by the Trainmen against the Carriers to induce the latter to breach their contract with the Porters, such conduct constituted a common law tort committed by the Trainmen against the Porters.

Respectfully submitted,

CLIF LANRSDALE,
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Attorneys for Petitioners.

Appendix A.

(This is an unpublished opinion by a three-judge court of the Northern District of Illinois.)

In the United States District Court
for the Northern District of Illinois,
Eastern Division.

Obie Faust Hunter, *et al.*, Plaintiffs,

vs. No. 44 C 971

The Atchison, Topeka and Santa Fe Railway Company, *et al.*, Defendants,

Memorandum.

Plaintiffs, who describe themselves as members of a class and craft of railroad employees, entirely composed of colored persons and known as Train Porter Brakemen or Train Porters and Chair Car Attendants or Parlor Car Attendants, have brought this action against the Atchison, Topeka, Santa Fe Railway Company, the National Railroad Adjustment Board, First Division, and the Secretary and members thereof, the vice-president of the Brotherhood of Railroad Trainmen, a voluntary unincorporated association comprising all the persons who would be adversely affected if the relief prayed in the complaint were granted, and certain other persons as representatives of that class, praying that a certain order of the National Adjustment Board be set aside, that defendants be enjoined from attempting to enforce said order and for other relief and raising the question of the constitutionality of the Act, or parts of the Act, creating the Board.

Plaintiffs allege that prior to 1899 the defendant railroad company created a class of employees composed ex-

clusively of colored persons known as train porters, train porter brakemen or chair or parlor car attendants, their duties being to keep their cars clean, care for passengers and, at the head end of the train, to inspect cars and test signals and brake apparatus for the safety of train movement, to open and close switches, couple and uncouple cars and engines and hose and chain attachments thereof; that the members of such class performed all of such duties until the entry by the Board of the order complained of. Plaintiffs are members of this class, which is not organized and has no union to represent its members.

During all of the time mentioned, plaintiff alleges, there has been another class of persons, exclusively white, known as brakemen, who worked on freight trains and also performed the same service on the rear end of passenger trains, as the porters or porter brakemen on the front end. All of these persons belong to the organization known as the Brotherhood of Railroad Trainmen.

It is further alleged that on May 3, 1939, the Brotherhood of Railroad Trainmen, without notice to any member of the class to which plaintiffs belong, filed with the National Railroad Adjustment Board, First Division, at Chicago, Illinois, a protest against the railroad agency charging non-compliance with certain rules and the provisions of a contract between the railroad and the Brotherhood, the substance of the protest being (as we gather from the complaint though the allegations on this subject are rather confused) that the members of plaintiff's class were being given work that should go to the white men members of the Brotherhood. A hearing was had at which the railroad company and the Brotherhood, but not the Porters, were heard, and the majority of the Board, the employee representatives and the Referee, held the complaint well found and that the use of Porters for the work above

mentioned was a violation of the rights of the members of the Brotherhood. The five employer members dissented, calling attention to the fact that train porters had been employed by the railroads since March, 1899, and since that time had performed the duties complained of; that on two prior occasions a similar dispute between the same groups had been submitted to the Train Service Adjustment Board created by the Act of 1926, in the first of which submissions the parties had agreed that the decision should be final and binding upon them and in each instance the Board rejected the contention of the Brotherhood.

Plaintiffs pray that the order of the Board may be set aside for the reason, among others, that it is not authorized by the terms of the Act creating the Board and they also attack the constitutionality of the Act. It is with this latter question only that we have to deal.

If the Board established by the Railway Labor Act were the only tribunal to which disputes between a railroad and its employees could be submitted there might be some force to the contention that the Act in its operation violates the Constitution. The dispute here is between white and colored employees as groups and the Board, the labor members of which are representatives of unions which exclude colored persons, is, perhaps a biased tribunal in such a case as this.[1]

But plaintiffs are not limited to proceedings before the Board for the protection of their rights. Congress created the Board for the purpose of providing means for the prompt settlement of labor disputes between railroads and their employees and to avoid interruptions of commerce by strikes or lockouts. As the most serious disturbances

[1] They also complain that the term "national in scope" used in the Act in describing the union entitled to representation on the Board is vague and uncertain, but we do not think it necessary to pass on this question.

arise from disputes between employees organized into unions and the railroads, it provided for a Board composed of representatives of unions and representatives of the railroads, gave it jurisdiction of disputes submitted to it and provided certain means of enforcement of its orders.

But it did not take away the right of an employee to appeal to the courts for relief. If a railroad, in violation of the rights of an employee, discharges him or attempts to deprive him of seniority rights the civil courts afford him a remedy. *Nord* v. *Griffin*, 86 F. (2d) 481, cert. denied, 300 U. S. 673; *Moore* v. *Illinois Central R. R. Co.*, 312 U. S. 630. In this latter case Mr. Justice Black speaking for the court said:

> "For neither the original 1926 Act nor the Act as amended in 1934, indicated that the machinery provided for settling disputes was based upon a philosophy of legal compulsion. On the contrary, the legislative history of the Railway Labor Act shows a consistent purpose on the part of Congress to establish and maintain a system for peaceful adjustment and mediation *voluntary in its nature*. The District Court and Circuit Court properly decided that petitioner was not required by the Railway Labor Act to seek adjustment of his controversy with the railroad as a prerequisite to a suit for wrongful discharges." (Emphasis ours).

In their complaint plaintiffs allege that by contract or custom they had acquired certain seniority rights as brakemen and that the railroad because of pressure by a union composed solely of white men deprived them of work they had been doing and reduced their seniority. If their legal rights were violated they could have restrained the railroad from continuing the wrong as was

done in *Nord* v. *Griffin, supra.* Or they might have their action for damages.

The Act does not deprive plaintiffs of liberty or property and does not violate the Fifth Amendment to the Constitution.

JUDGE WILLIAM M. SPARKS
JUDGE WILLIAM H. HOLLY,
JUDGE WALTER J. LA BUY,

Dated: October 17, 1946.

Appendix B.

In the District Court of the United States
for the Northern District of Illinois
Eastern Division

Obie Fauster Hunter, *et al.*, Plaintiffs,
vs.
The Atchison, Topeka and Santa Fe Railway Company, a corporation, Eastern and Western Lines, *et al.*, Defendants.

Civil Action
No. 44 C 971

Findings of Fact, Conclusions of Law and Order for Temporary Injunction.

This cause came on to be heard on the 26th day of January, 1948, and from day to day thereafter and now coming on for final disposition upon the application of the plaintiffs for a temporary injunction, before the Honorable Walter J. La Buy, Judge of the District Court of the United States, for the Northern District of Illinois, Eastern Division, and upon all pleadings and oral and documentary evidence introduced by the parties in open

court and upon consideration thereof and of the arguments of counsel for the respective parties, the court now finds the following:

I.

Findings of Fact.

1. The court finds that the plaintiffs are members of a class or craft of railroad employees entirely composed of colored persons and known as porter brakemen or train porters and hereinafter called porter brakemen and chair car attendants, and reside in various states of the United States of America; and the porter brakemen have been employed by the defendant, The Atchison, Topeka and Santa Fe Railway Company, a corporation, Eastern and Western Lines, hereinafter called the Carrier Defendant, in the operation of its business as an Interstate Carrier, since to-wit: 1899 as such class or craft; that the defendant, The Atchison, Topeka and Santa Fe Railway Company, a corporation, is a corporation organized under the laws of the State of Kansas, and is licensed to do business in the State of Illinois; said corporation has its principal office or place of business in the City of Chicago, County of Cook and Sate of Illinois, in (page 2 begins) said Northern District of Illinois, Eastern Division, and is within the jurisdiction of this court; and is a carrier engaged in Interstate Commerce by railroad within the meaning of the Acts of Congress relating thereto. The defendant, The National Railroad Adjustment Board, First Division, is a board established by and pursuant to the authority of the Railway Labor Act as amended, maintaining headquarters in Chicago, Cook County, Illinois, within said District, in accordance with the provisions of the said Act of Congress and maintains its principal office within said District. The defendants, G.

W. Laughlin, William Bishop, H. J. Hoglund, George H. Dugan, T. L. Green, Nathan L. Hale, B. C. Johnson, Sidney R. Prince, Jr., O. E. Swan, and R. J. Tillery are members of said National Railroad Adjustment Board, First Division, and are within said District. James B. Riley, who acted as Referee and a member of The National Railroad Adjustment Board, First Division, for Order and Award No. 6640, Docket No. 7400, is a non-resident of the State of Illinois and is not within the jurisdiction of this Honorable Court. The defendant, T. S. McFarland, is Secretary of said National Railroad Adjustment Board, First Division, and is within said District. The defendant, F. W. Coyle, is within said District and is Vice President of the Brotherhood of Railroad Trainmen, a voluntary, unincorporated association comprising a majority of the persons who would be adversely affected if the relief prayed in the complaint were granted. The defendants, C. D. Shepherd, J. W. McDonald, E. F. Allen, M. L. Pennebaker, J. J. Kain and C. E. Martz, who are employed as brakemen by the Carrier Defendant, are members of the Brotherhood of Railroad Trainmen and representatives of that class of persons and employees who would be adversely affected if the relief prayed in the complaint were granted and are within said District.

2. The matter in controversy herein involved exceeds, exclusive of interest and costs, the sum or value of Three Thousand Dollars ($3,000.00) and the suit and controversy arises under the Constitution and laws of the United States.

3. On to-wit: March 1, 1899, the Carrier Defendant created a class or craft of employees known as train porters or porter brakemen and (p. 3 begins) prescribed their duties as follows: To inspect cars, test signals and brake apparatus for the safety of train movement, use hand

and lamp signals for the protection and movement of trains, open and close switches, couple and uncouple cars and engines and the hose and chain attachments thereof, compare watches when required by the rules of the company, care for passengers who were received and discharged from the head end of the trains, report to and receive instructions from the train masters and while on duty, to be under the direction of the train conductor, to perform the duties of a brakeman, carry the proper equipment to keep the coaches and chair cars under their care neat and clean. This contract of employment with the Carrier Defendant was to continue at the will of the said Carrier Defendant. The Carrier Defendant did not will to terminate said contract or employment until the brakemen defendants through the Brotherhood of Railroad Trainmen as their representative continued to insist that it comply with Award No. 6640 without further delay.

4. Certain rosters setting forth the seniority dates of only the plaintiff porter brakemen were from time to time established by the said Carrier Defendant and were made public and posted at various places on the property of said Carrier Defendant, showing the employees entitled to preference of runs and assignment of work according to their seniority rights. Nothing except as stated in paragraph 3 herein, has intervened to impair or abrogate the seniority rights of the plaintiffs as porter brakemen and that said seniority rights are property within the meaning of the 5th Amendment of the Constitution of the United States.

5. At the time the plaintiffs were employed as a class or craft by the Carrier Defendant, there was then existing and has continued to exist a separate class or craft of employees exclusively white, known as brakemen who were employed by the Carrier Defendant to perform and did

perform some of the services on the rear end of passenger trains which the porter brakemen performed on the front end of said passenger trains. These brakemen belonged to the class or craft represented on the Carrier Defendant by the Brotherhood of Railroad Trainmen. Separate seniority rosters were kept for these brakemen and there was no interchange of (p. 4 begins) seniority between them and the porter brakemen.

6. At the time of the entry of the said Order and Award No. 6640 and for many years prior thereto, the plaintiff porter brakemen were receiving an average monthly wage of $250.00 each for the services which they were rendering to the Carrier Defendant.

7. On May 3, 1939, there was filed with the defendant, The National Railroad Adjustment Board, First Division, Chicago, Illinois, hereinafter called the Board, and the individual members thereof, without notice to the plaintiffs or any member of their class or craft, a protest against the Carrier Defendant, charging non-compliance on its part with the provisions of a contract between the Carrier Defendant and the Brotherhood, the substance of the protest being that certain work performed by employees not holding seniority as brakemen was work which should go to persons holding seniority as brakemen on the Carrier Defendant, and claimed reimbursement at the passenger rate for time lost by certain brakemen in the Plains Division; thereafter, certain proceedings were had by the said defendant, The Board, with reference thereto; No notice of the said proceeding was given to the plaintiffs or to any member of the class or craft to which the plaintiffs belonged, and the said proceedings and all of them were conducted and carried on in the absence of the plaintiffs and the members of the class or craft to which they belonged; the only parties to the proceedings

before the said Board were The Atchison, Topeka and Santa Fe Railway Company, Eastern and Western Lines, and the Brotherhood of Railroad Trainmen of which voluntary, unincorporated association, the white brakemen who are named as defendants in this suit are members, but of which association the plaintiffs nor any member of their class or craft are not and have never been members; after the hearing on said protest and as a result thereof, the majority of the said Board, the employee representatives and the Referee, on April 20, 1942, found that the said "use of porters or other employees, who do not hold seniority as brakemen is in violation of claimants' seniority rights". After the hearing in said proceedings before the Board and as a result thereof, the said Board did on April 20, 1942, issue its Award No. 6640, Docket No. 7400; said Award was issued by the said Board acting by and through the defendant, T. S. McFarland (p. 5 begins) as Secretary thereof. On May 14, 1942, the Carrier Defendant filed a petition for rehearing with the said Board praying that the said Award No. 6640 be set aside; the said Board refused to grant or deny said petition for rehearing. On May 3, 1944, Carrier Defendant withdrew said petition for rehearing. Such withdrawal was at the insistence of the Brotherhood of Railroad Trainmen acting for the brakemen defendants who demanded that the Carrier Defendant without further delay comply with the Order and Award No. 6640 by removing, reducing, and furloughing the plaintiffs and all members of their class or craft; whereupon the said Carrier Defendant notified the plaintiffs and all members of the class or craft that the Award No. 6640 and Order would be immediately enforced against them. Some of the said plaintiffs and members of the class or craft to which they belonged were removed from their regular

runs, replaced by members of the class or craft to which the brakemen attendants belonged solely as a result of Award No. 6640, and their wages were reduced. All of the plaintiffs and members of the class or craft were to be removed, reduced or furloughed solely by virtue of the Order and Award No. 6640. Since the filing of this suit and the appearance of the defendants hereinabove mentioned, further enforcement of the above mentioned Order and Award No. 6640 against the said plaintiffs was threatened by written notice to the plaintiffs from the Carrier Defendant, that on November 1, 1944, the said plaintiffs would be removed from their positions as porter brakemen on trains No. 1, 2, 3, 2nd. 3, 2nd. 4, extra section 4, 5, 6, 9, 10, 15, 16, 1st. and 2nd. 23, 1st, and 2nd. 24, 27, 28, 47, 50 and other trains of the said defendant, The Atchison, Topeka and Santa Fe Railway Company, Eastern and Western Lines which positions they then held and have held and occupied prior to the entry of the aforesaid Order and Award; the positions now held by the said plaintiffs are to be filled by members of the class or craft to which the brakemen defendants belong and who have not heretofore held said positions, such changes which are to be so made are solely by reason of the Order and Award No. 6640 aforesaid and the enforcement thereof.

8. The individual brakemen defendants named herein, through the Brotherhood of Railroad Trainmen, are continuing and threaten to con- (p. 6 begins) tinue to insist upon the Carrier Defendant that it comply with the terms of the Order and Award No. 6640 and Carrier Defendant will comply with Award No. 6640 unless enjoined by order of this court, which compliance will result in immediate, great and irreparable injury, loss and damage being caused plaintiffs before the hearing and determination of this cause can be had, unless the defendants and each

of them are, pending such hearing and determination, enjoined by order of this court; the enforcement of the said Order and Award will deny the plaintiff porter brakemen their property rights to continue to work at the will of the Carrier Defendant and perform the services which they have been performing since 1899, and plaintiffs will suffer loss of their seniority rights and will also lose certain rights which they have earned to benefits under the Railroad Retirement Act.

II.

Conclusions of Law.

From the foregoing facts the court concludes:

1. That this court has jurisdiction of the parties and the subject matter, and venue is properly in this court.

2. The complaint states a cause of action, cognizable by this court.

3. On the basis of *Nord* v. *Griffin*, 86 Fed. (2d) 481, which is the settled law of this jurisdiction, Award No. 6640 of the National Railroad Adjustment Board, First Division, is void because it was rendered without notice to plaintiffs who were involved in the subject matter thereof, within the meaning of the Railway Labor Act, Sec. 3 (j) and because the proceeding conducted by the said Board preliminary to issuing the Award were outside the presence of the plaintiffs, who were not given an opportunity to be heard or represented before the Board. Compliance with the Award No. 6640 will deprive plaintiffs of their property rights without due process of law in violation of the 5th Amendment of the Federal Constitution.

4. Violation by defendant brakeman of the right of plaintiffs to be free from interference with their employment through the enforcement of void Award No. 6640 deprives plaintiffs of their property rights without due process of law.

5. The matter in controversy herein involved exceeds, exclusive (p. 7 begins) of interest and costs, the sum or value of Three Thousand Dollars ($3,000.00) and the suit and controversy arises under the Constitution and laws of the United States.

6. The loss of the property rights herein mentioned by the plaintiffs constitutes irreparable injury for which there is no adequate remedy at law.

7. The plaintiffs have no adequate remedy at law; the enforcement of the said Order and Award No. 6640 renders inadequate any legal relief, and the plaintiffs' only relief is in a court of equity. A temporary injunction should issue to remain in effect until the disposition of this cause on the merits or the further order of this court so that pending the final hearing and determination of this action, no further injury should be inflicted upon these plaintiffs or other members of their class employed by the said Carrier Defendant and on whose behalf plaintiffs also sue.

WALTER J. LA BUY,
United States District Judge.

February 6, 1948.

Order for Temporary Injunction.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

I.

That the defendants, The Atchison, Topeka and Santa Fe Railway Company, a corporation, Eastern and Western Lines; F. W. Coyle, as Vice President of the Brotherhood of Railroad Trainmen, a voluntary unincorporated association; C. D. Shepherd, J. W. McDonald, E. F. Allen, M. L. Pennebaker, C. E. Martz, J. J. Kain, C. E. Roger, D. W. Cole, their officers, agents, servants, employees, attorneys, representatives and all other persons combining with, acting in concert with, or under their direction, authority, control or advice, or under the direction, control, authority or advice of any of them, and all other persons acting under or through their authority or on their behalf or by virtue of their office held by any of the aforesaid defendants and all persons whomsoever, who are charged with the responsibility of the enforcement of the Order and Award No. 6640, Docket No. 7400, entered April 20, 1942, by The National Railroad Adjustment Board, First Division, and they are hereby severally enjoined and restrained specially in the enforcement (p. 8 begins) and execution of the provisions of the Order and Award entered April 20, 1942, by The National Railroad Adjustment Board, First Division, Award No. 6640, Docket No. 7400 and from enforcing or taking any steps to enforce the said Award by removing and displacing any of the said plaintiffs or members of the class or craft to which they belong solely under the provisions of the said Order and Award, from their positions as porter brakemen on trains No. 1, 2, 3, 2nd. 3, 2nd. 4, extra section 4, 5, 6, 9, 10, 15, 16, 1st. and 2nd. 23, 1st. and 2nd.

24, 27, 28, 47, 50 and other trains of the said defendant, The Atchison, Topeka and Santa Fe Railway Company, Eastern and Western Lines which positions they now hold and have held and occupied prior to the entry of the aforesaid Order and Award.

IT IS FURTHER ORDERED that the temporary injunction herein issued shall remain in effect until the disposition of this cause on the merits or until the further order of this court, conditioned upon the plaintiffs giving bond with good and sufficient surety, to be approved by the court, in the penal sum of $1,000.00 conditioned for the payment of such costs and damages as may be incurred or suffered by the defendants or any of them, or which the court may award to the defendants or any of them, if it shall be found that the defendants or any of them have been wrongfully enjoined or restrained by this Order. That in lieu of the bond herein mentioned, the plaintiffs or their attorneys on their behalf may deposit with the Clerk of this Court, the sum of $1,000.00 in cash or negotiable United States Government Securities with the Clerk of this Court, which said deposit shall be subject to the same terms and conditions of the bond herein mentioned.

DATED at Chicago, Illinois, this the 6th day of February, 1948.

ORDERED ENTERED:

WALTER J. LA BUY,
United States District Judge.